IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1293 OF 2007

WITH

CIVIL APPLICATION NO. 396 OF 2007

Reliance Industries Ltd. & Anr. .. Petitioners

V/s

State of Maharashtra & Ors. .. Respondents

Mr.Milind Sathe, Senior Advocate with Mr.Chirag Balsara i/b Junnarkar & Associates for the Petitioners.

Mr.Vinay Sonpal, A.G.P. for the Respondents.

CORAM : H.L. GOKHALE, ACG. CJ. &
V.M. KANADE, J.

DATE : 1ST MARCH 2007

P.C. :

1. Heard Mr. Milind Sathe for the Petitioners and Mr.Sonpal, A.G.P. for the Respondents.

2. Rule. Rule is made returnable forthwith. The counsel for both the parties have made their submissions.

3. Reliance Petroleum Ltd., a Company having its registered office in Gujarat, amalgamated into the Petitioner Company under an order passed by the Company Judge of this Court on 7th June 2002 when he sanctioned

the scheme of amalgamation of the said Company with the 1st Petitioner Company. That order was passed on Company Petition No.391 of 2002 with Company Application No.133 of 2002 which was filed in this Court. Inasmuch as the Company, which was merging into the 1st Petitioner Company, was having its registered office in Gujarat, a petition was presented to the Gujarat High Court also being Company Petition No.75 of 2002 along with Company Application No.76 of 2002 and the Gujarat High Court sanctioned the scheme of amalgamation, which was one and the same scheme, by its order dated 13th September 2002.

4. The Collector and Additional Superintendent of Stamps, Gujarat required the Petitioners to pay the stamp duty of Rs.10 crores being the duty payable in respect of the order of the Gujarat High Court sanctioning the scheme of amalgamation. Accordingly, this payment was made on 18th September 2002. The Superintendent of Stamps, Mumbai required the Petitioners to pay a stamp duty of Rs.25 crores on the order of amalgamation passed by this Court. The Petitioners, therefore, addressed a letter to the Superintendent of Stamps, Mumbai on 16th October 2002 enclosing therewith the order passed by the Gujarat High Court as well as the proof of payment of Rs.10 crores to

the Stamp Office in Gujarat and seeking the reduction in payment of stamp duty to that effect. This request has been turned down. The Deputy Superintendent of Stamps, Mumbai has issued a notice to the Petitioners thereafter. A hearing has been given and subsequently an order was passed on 7th April 2003 rejecting the contentions of the Petitioners. An appeal was preferred under section 53(1)(a) of the Bombay Stamp Act, 1958 ("the Act" for short) against that order. It is this appeal which has come to be rejected by an order passed on 10th August 2005.

5. The 1st Petitioner thereupon has paid the stamp duty of Rs.15 crores in the meanwhile on 9th June 2003 and sought a reference under section 54 of the Act on the following questions:-

(i) Whether a scheme sanctioned between the two Companies under sections 391 and 394 of the Companies Act is one and the same document chargeable to stamp duty regardless of the fact that order sanctioning the scheme may have been passed by two different High Courts by virtue of the fact that the Registered Office of the two Companies are situated in different States?

(ii) Whether the instrument in respect of amalgamation or compromise or scheme between the two Companies is such a scheme, compromise or arrangement and the orders sanctioning the same are incidental as the computation of stamp duty and valuation is solely based on the scheme and scheme alone?

(iii) Whether in a scheme, compromise or arrangement sanctioned under sections 391 and 394 of the Companies Act where Registered Offices of the two Companies are situated in two different States, the Company in State of Maharashtra is entitled for rebate under section 19 in respect of the stamp duty paid on the said scheme in another State?

(iv) Whether for the purposes of section 19 of the Act, the scheme / compromise / arrangement between the two Companies must be construed as document executed outside the State on which the stamp duty is legally levied, demanded and paid in another State?

6. The above application seeking the reference has come to be rejected by Respondent No.2, i.e. Chief

Controlling Revenue Authority, by its order dated 30th December 2006. The petition seeks to challenge this order declining to make a reference as is seen from prayer (a). Prayer (b)(ii) seeks a direction that the questions of law sought to be referred be directed to be referred to this Court.

7. After the matter was heard for some time, Mr.Sathe, learned counsel appearing for the Petitioners, made a statement that without prejudice to their contentions, the Petitioners will deposit the amount demanded, i.e. Rs.10 crores, with the Collector and Superintendent of Stamps, Mumbai (Respondent No.3 herein) within 2 weeks from today. In view of this statement made by the counsel for the Petitioners, Mr.Sonpal, learned A.G.P. has taken instructions from Respondent No.2 in writing and in view thereof, the Respondents are agreeable that a reference be called from the authority concerned.

8. In view of the above understanding being arrived at between the parties, we allow this petition and set aside the order dated 30th December 2006 declining the reference as sought by the Petitioners. Respondent No.2 is directed to refer the above mentioned substantial questions of law for the determination of

this Court. Respondent No.2 will state the case and send the reference to this Court within 4 weeks after the amount of Rs.10 crores is deposited by the Petitioners. Reference, when made, will be placed before a Bench of three Judges as required under section 54(2) of the Act.

9. We make it clear that in the event the reference is decided in favour of the Petitioners, it will be for the Court to decide as to what rate of interest on the amount deposited by the Petitioners should be awarded to the Petitioners. This does not mean any expression on the merits of the submissions of the Petitioners. We record the submission of Mr.Sonpal, A.G.P. that in the event the reference is rejected, the Government will be entitled to recover the interest on account of delay in making the payment in accordance with the provision under the Bombay Stamp Act. All these questions will be examined when the Court decides the reference.

10. Rule is made absolute as above with no order as to costs.

11. In view of the order passed on the writ petition, civil application stands disposed of.

ACTING CHIEF JUSTICE

V.M. KANADE, J.